

**DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS**

July, 2012

Claims Examination Progress

- First benchmark 8,000 claims by 12-31-2006
- Second benchmark 19,000 claims by 12-31-2008
- Third benchmark 31,000 claims by 12-31-2010
- **Fourth Benchmark 44,000 claims by 12-31-2012**

- Claims examined July 2005 thru May, 31 2012 **50,924**
- Claims examined by Purpose
 - o Irrigation 11,312 22%
 - o Stock 28,186 56%
 - o Domestic 6,618 13%
 - o Other 4,808 9%

50,924

Claims remaining to be examined

6,076

Summary Reports to Water Court

Date Issued

Union Creek (part of 76F)	May 19, 2005
Teton River (41O)	August 15, 2005
Big Hole River (41D)	October 31, 2006
Tongue River, below hanging Woman Creek (42C)	August 7, 2007
Blackfoot River (76F)	August 14, 2007
Missouri River, from Holter Dam to Sun River (41QJ)	August 15, 2007
Tongue River, above Hanging Woman (42B)	December 5, 2007
Pryor Creek (43E)	August 18, 2008
Smith River (41J)	September 1, 2008
Beaver Creek (40M)	September 1, 2008
Flatwillow Creek (40B)	September 11, 2008
Milk River (40J)	December 5, 2008
Little Big Horn River (43O)	February 6, 2009
Big Muddy Creek (40R)	April 6, 2009
Missouri River, Sun River to Marias River (41Q)	June 16, 2009
Beaverhead River (41B) *	August 14, 2009
Arrow Creek (41R)	October 23, 2009
Missouri River, from Marias River to Bullwhacker Creek (41T)	November 17, 2009
Milk River above Fresno (40F)*	April 15, 2011

(* basins not yet decreed)

Decrees Issued by Water Court	Date Issued	Number of Claims
Teton River (41O)	12/29/2005	2,541
Union Creek (part of 76F)	3/10/2006	42
Big Hole River (41D)	4/6/2007	3,892
Missouri River (41QJ)	2/6/2008	2,584
Tongue River (42C)	2/28/2008	4,710
Tongue River (42B)	2/28/2008	1,345
Forest Service Compact	5/19/2008	262
BLM-Montana Compact	3/6/2009	2
Beaver Creek (40M)	3/20/2009	2,942
Big Muddy Creek (40R)	1/28/2010	2,029
Pryor Creek (43E)	2/25/2010	629
Little Big Horn River (43O)	3/17/2010	1,176
Missouri River from Sun River to Marias River (41Q)	5/27/2010	4,127
Milk River between Fresno Res & Whitewater (40J)	6/24/2010	12,897
Smith River (41J)	12/16/2010	2,719
Blackfoot River (76F)	2/10/2011	3,717
Flatwillow Creek (40B)	5/5/2011	3,677
Arrow Creek (41R)	6/23/2011	2,179
National Bison Range Compact	9/30/2011	97
Missouri River, from Marias River to Bullwhacker Creek (41T)	4/19/2012	3,073

Above decrees scanned and available at:

http://www.dnrc.mt.gov/wrd/water_rts/adjudication/default.asp

	BASINS BY COMPLETION DATE - DNRC WORK PLAN FY 2012			
BASIN COUNT	BASIN NAME	WORK STATUS	Estimated Completion Date	
1	Flathead R below Flathead Lake (76L)	Examination complete	12	2009
2	Big Horn R below Greybull R (43P)	Summary Report pending	11	2013
3	Rosebud Creek (42A)	Summary Report pending	12	2012
4	Shoshone River (43N)	Summary Report pending	10	2012
5	Milk River above Fresno (40F)	Summary Report issued	4	2011
6	Flathead River (76LJ)	Examination in progress	7	2013
7	Cut Bank River (41L)	Summary Report pending	6	2012
8	St. Mary River (40T)	Summary Report pending	11	2012
9	Yellowstone R below Powder R (42M)	Examination in progress	6	2013
10	Red Rock River (41A)	Examination in progress	3	2012
11	Peoples Creek (40I)	Summary Report pending	9	2012
12	Two Medicine River (41M)	Summary Report pending	8	2013
13	Marias River (41P)	Examination in progress	5	2014
14	Missouri R between Bullwhacker & Musselshell (40EJ)	Examination in progress	12	2012
15	Bitterroot R, E side (76HA)	Examination in progress	6	2015
16	Frenchman Creek Re-Examination (40L)	Summary Report pending	7	2014

Assistance for District Court Enforcement of Water Court Decrees

2005 season completed water court assistance for 23 streams
2006 season completed water court assistance for 23 streams
2007 season completed water court assistance for 26 streams
2008 season completed water court assistance for 32 streams
2009 season completed water court assistance for 36 streams
2010 season completed water court assistance for 38 streams
2011 season completed water court assistance for 38 streams
2012 season 39 projects are undergoing updates

Post Decree Assistance (July-March FY2012)

Case type	case count	work hours
Certified case		170
85-2-248	258	5,398
Case	70	2,307
General assist		3,436
Total hours		11,311

Post Decree assistance primarily involves working with claimants and the Water Court to help resolve issue remarks on water rights. This assistance is generated through the on motion process (85-2-248) and objections by water users resulting in a case. Assistance includes meeting with claimants, conducting field investigations, mapping, and providing recommendations and technical reports pertaining to individual cases. In addition, assistance is requested by the Water Court to help with certified cases before and after the initial decree phase. Unique requests to help the Water Court resolve specific cases such as large basin mapping projects, and other technical requests fall within the general assistance category.

Expenses

YTD FY 2012:	Operating Costs	\$ 231,734.13
	Personnel Services	\$ 1,475,126.32
	Total	\$ 1,706,860.45
	Budget	\$ 2,141,331

Billing System

108,000 bills mailed Dec 27, 2005
Estimated revenue generated \$6.2 million
Revenue received \$5.218 million

Appeals

5,089 Appeals received
5089 appeals resolved to date (1,121 denied, 3,113 resolved with fee correction, 855 cancelled)

The department is working on preparing 264 invoices over \$200.00 to send to the Department of Revenue for collection. These invoices total approximately \$287,000.

HB39 Automate Ownership updates (effective July 1, 2008)

- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru January 2012.
- In 2010, 3,821 ownerships were updated involving 9,460 water rights
- In 2011, 6,245 ownerships were updated involving 15,765 water rights.
- So far this fiscal year, 8,734 ownerships have been updated involving 20,530 water rights.

Adjudication Transition Plan

- The adjudication transition plan was completed summer of 2011 as identified in the legislative audit report. This plan identifies potential resources needed beyond 2015.

WATER COURT
ADJUDICATION PROGRESS REPORT TO THE EQC (AND WATER POLICY INTERIM
COMMITTEE) PURSUANT TO § 85-2-281, MCA
Submitted by C. Bruce Loble, Chief Water Judge
As of June 21, 2012

The Water Court is continuing to work through its expanding inventory of water right claims that have unresolved objections, issue remarks, motions to amend, and claims certified to the Water Court by the DNRC or District Courts. The Water Court is primarily working on water right claims in the following basins:

Basin	Sources	Claims in Decree	Remaining Claims to Resolve
40B	Flatwillow Creek	3,677	Decree issued 5/5/2011 - 60 day Notice of Intent to Appear deadline expires 7/16/2012
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Cr.	12,897	4,697
40M	Beaver Creek, Tributary of Milk River	2,942	846
40O	Milk River Below Whitewater Creek	3,306	135
40R	Big Muddy Creek	2,029	521
41D	Big Hole River	3,892	1,038
41I	Missouri River upstream of Holter Dam to Three Forks	5,168	201
41J	Smith River	2,719	974
41K	Sun River	2,856	104
41O	Teton River	2,541	239
41Q	Missouri River from Sun River to Marias River	4,127	672
41QJ	Missouri River from Holter Dam to Sun River	2,584	257
41R	Arrow Creek	2,179	Decree issued 6/23/2011 - Objection deadline expired 6/15/2012 - Counterobjection deadline not yet set
41T	Missouri River from Marias River to & including Bullwhacker Creek	3,073	Decree issued 4/19/2012 - Initial Objection Deadline 10/16/2012
42B	Tongue River above & including Hanging Woman Creek	1,345	233

42C	Tongue River below Hanging Woman Creek	4,710	963
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	143
43A	Shields River	3,395	101
43B	Yellowstone River above & including Bridger Creek	4,860	308
43E	Pyror Creek	629	485
43O	Little Bighorn River	1,176	1,135
43Q	Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers	2,473	92
76F	Blackfoot River	3,717	Decree issued 2/10/2011 Notice of Intent to Appear deadline expires 7/30/2012
76HF	Bitterroot River - Westside Subbasin	3,774	106
<p>United States Forest Service - Montana Compact — A hearing on the objections was held on January 4, 2012 in Missoula. A decision is pending.</p> <p>United States of America, Fish and Wildlife Service, National Bison Range - Montana Compact was issued September 30, 2011. One objection was received by the objection deadline. An initial settlement period has been set and a Status Report is due on November 19, 2012.</p>			

Since the passage of the legislation accelerating the water right adjudication effort by the 2005 Legislature, the DNRC and the Water Court have issued 16 decrees containing approximately 51,000 claims. In the next 6 months, we hope to issue 3 more decrees containing about 7,000 claims in the Red Rock River, Beaverhead River, and the upper Milk River drainages (Basins 41A, 41B, and 40F). By 2020, we will issue an additional 14 initial decrees containing about 31,000 claims to meet the goals of the 2005 Legislature. The Water Court is on track to meet the 2020 goal and is currently running slightly ahead of our projected completion date.

Chief Justice McGrath appointed Russell McElyea to be Associate Water Judge for a four year term beginning July 1, 2012. Judge McElyea's arrival comes at a good time because the decree issuance acceleration, as anticipated, has almost doubled the Water Court caseload in the last six months. We now have about 18,000 active claims awaiting resolution. When Judge McElyea officially assumes his office, the Water Court will be fully staffed.

This rapid acceleration brings new challenges. For example, as the Water Court issues new decrees in basins containing Indian reservations, new issues are arising. Previous reports to this Committee have mentioned (1) the Crow Tribe objections in the Pryor Creek (43E) and the

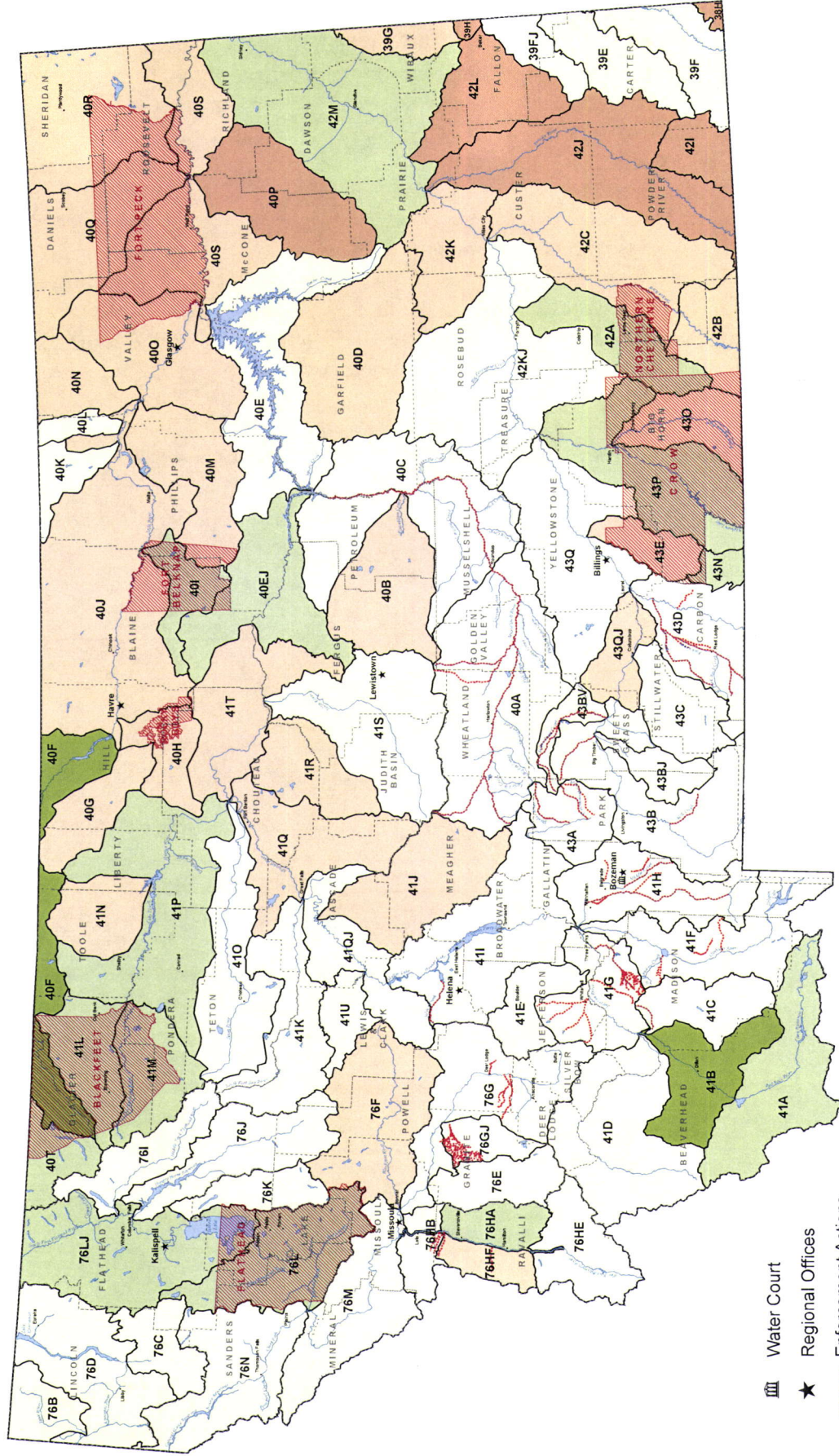
Little Bighorn River (43O) basins regarding Section 2 of the 1920 Crow Allotment Act; and (2) a DNRC issue remark which questions water appropriations earlier than Indian land cession dates, such as July 1, 1873 in the Missouri River drainage between Holter Dam and the Sun River (Basin 41QJ). The Section 2 issue is still in the settlement phase. The land cession issue is being briefed and the last brief is currently due on July 2.

One additional tribal issue has arisen regarding water rights being claimed on tribal trust lands. The United States asserts claims appurtenant to tribal trust lands may only be filed by the United States for the benefit of a tribe or allottee. This assertion includes rights set forth in any water rights settlement Compact with the state of Montana. Apparently, some of these checkerboard tribal trust lands or allotments are not clearly identified on a public record, so we are trying to determine the best way to ascertain the property ownership to make sure these claims are correctly identified and accurately decreed.

Finally, within the next few months, the Water Right Adjudication Advisory Committee hopes to complete its work on a report about the claims which were exempt from the filing process and what options might be available to address their absence from the adjudication. The Committee has embarked on this project at the request of Senator Brenden.

Basin Location and Adjudication Status

6/21/12



Basin Boundary & Decree Status

- Water Court
- Regional Offices
- Enforcement Actions
- COUNTIES
- RESERVATIONS
- Currently Examining
- Preliminary Decree
- Final Decree
- Summary Report Issued